

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

WASEEM DAKER,

Plaintiff,

VS.

BRIAN OWENS, et al.,

Defendants.

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CASE NO. 5:12-CV-459 CAR

ORDER

Plaintiff Waseem Daker, an inmate currently confined at the Georgia State Prison in Reidsville, Georgia, filed a *pro se* civil rights complaint under 42 U.S.C. § 1983. On March 21, 2014, Plaintiff's case was dismissed pursuant to an Order granting Defendant's Motion to Dismiss. (Doc. 134.) Judgment was entered on March 24, 2014. (Doc. 135.)

Plaintiff has now filed a Notice of Appeal¹ and a Motion to Proceed *in forma pauperis* on Appeal. (Docs. 149, 153.) In the Court's best judgment, after review of Plaintiff's case, an appeal from this Order cannot be taken in good faith. Plaintiff's Motion to Proceed *in forma pauperis* on appeal is accordingly **DENIED**. See 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.").

If Plaintiff wishes to proceed with his appeal, he must pay the entire \$505.00 appellate filing fee. Because Plaintiff has stated that he cannot pay the \$505.00 immediately, he must pay using the partial payment plan described under 28 U.S.C. § 1915(b). Pursuant to § 1915(b), the

¹ Plaintiff has filed two previous Notices of Appeal from orders issued in this case, both of which were dismissed for his failure to prosecute the appeals. (Docs. 147, 148.)

prison account custodian where Plaintiff is incarcerated shall cause to be remitted to the Clerk of this Court monthly payments of 20% of the preceding month's income credited to Plaintiff's account until the \$505.00 appellate filing fee has been paid in full. Twenty percent of any deposits into the prisoner's account shall be withheld by the prison account custodian who, on a monthly basis, shall forward the amount withheld from the prisoner's account to the Clerk of this Court each time the amount in the account exceeds \$10.00 until the total filing fee of \$505.00 has been paid. Checks should be made payable to "Clerk, U.S. District Court."

The Clerk of Court is **DIRECTED** to mail a copy of this Order to the custodian of the prison in which Plaintiff is presently incarcerated. Any further requests to proceed *in forma pauperis* on appeal should be directed, on motion, to the United States Court of Appeals for the Eleventh Circuit, in accordance with Rule 24 of the Federal Rules of Appellate Procedure.

PENDING MOTIONS

Plaintiff has filed a "Motion Reserving Right to Supplement Plaintiff's Objection to the Magistrate's 2/25/14 Report and Recommendation" (Doc. 137), as well as "Plaintiff's Second Motion and Declaration Showing Compliance with 'Prison Mailbox' Rule, and Showing Prison Official's Interference with Plaintiff's Mail" (Doc. 139), and a "Motion for Evidentiary Hearing and to Subpoena Witnesses/Evidence" (Doc. 140.) Plaintiff has also filed two motions for preliminary injunctions wherein he seeks court orders directing the Defendants to provide him with manila envelopes (Doc. 154) and to allow him to "use his non-legal indigent mail allowance for legal mail" (Doc. 155.) Because this case is now closed and is on appeal, the Court hereby **DENIES** each of the pending motions as **MOOT**.

Further pending motions as filed by Plaintiff include two Motions to Vacate, wherein

Plaintiff seeks to alter the Court's Judgment in this case. (Docs. 141, 160.) Plaintiff cites to Federal Rules of Civil Procedure, Rule 59(e), which he allows a court to alter or amend a prior Judgment, in support of his motions. The Eleventh Circuit, in a recent decision, held that "[a] Federal Rule of Civil Procedure 59(e) motion should be granted only when there is newly discovered evidence or manifest errors of law or fact in the initial ruling. Asking the district court to re-examine an unfavorable ruling is not the purpose of Rule 59(e)." *Helton v. Ramsay*, - -- F. App'x ---, 2014 WL 2071585, *2 (11th Cir. 2014) (citations omitted). Because Plaintiff has failed to show that there is newly discovered evidence or any errors in the Court's Judgment, Plaintiff's Motions to Vacate (Docs. 141, 160) are hereby **DENIED**.

SO ORDERED this 18th day of June, 2014.

S/ C. Ashley Royal
C. ASHLEY ROYAL, JUDGE
UNITED STATES DISTRICT COURT

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